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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/723,430

11/25/2003

Neil Young

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O'Melveny & Myers LLP

IP&T Calendar Department LA-1118

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EXAMINER

BROWN, VERNAL U

ART UNIT

PAPER NUMBER

2612

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/723,430 | Applicant(s) YOUNG ET AL. | |
| | Examiner VERNAL U. BROWN | Art Unit 2612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-10,12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to communication filed on 5/12/08.

Response to Amendment

The examiner has acknowledged the amendment of claim 1.

Response to Arguments

Applicant's arguments with respect to claims 1-4, 6-10, 12-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-10, 12-17, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant admitted prior art in view of Yang US Patent 6133847 and further in view of Nagata US Patent 6970096..

The applicant's disclosure [0009] discusses the many model train systems include a remote control for controlling different train engines on the track, as well as for controlling accessories. The remote control normally sends commands either wirelessly or through a base device connected to the tracks. The command will include an address, which the user typically

has to key in before or after hitting the command button. Each engine sees the transmissions, either wirelessly, or by picking up signals sent along the tracks. Each engine will only respond to commands with the address of that engine.

In an analogous art, Yang also teaches a remote control system where the controller and the controlled object are programmed to be associated with each other prior to the signaling to control the object. Yang teaches downloading the program control data from the device to be controlled to the remote control (col. 3 lines 7-17). Yang teaches the use of various data link for downloading the data to the remote control and also teaches that the same medium is not required for transmitting signals between the device to be controlled and the remote controlled (col. 3 lines 30-45). The reference of Yang therefore teaches a first and second communication channel for transmitting data to the remote control and transmitting data from the remote control.

Therefore it would have been obvious to have used the programming method of Yang to program the train vehicle controller of the admitted prior art since this would permit flexibility in the system since the controller could be used to control the vehicle in endless configurations.

In an analogous art, Nagata recognizes a problem with programming of train vehicles. Nagata prevents the accidental programming of the wrong train vehicle by placing the train in a box during programming. Communicating with a model vehicle for programming the system and then provide control signals to the model vehicle. The system of Nagata includes a control device 2 that communicates with a first device (train 1) when the first device is located near the control device; actually the first device is placed within the recess 21d of the control device. This narrow IR transmission (LED 23) is used to program the first device for future

communication using a second communication link from LED 22 on the opposite side of the controller. There is also a barrier around the LED 23.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the containment mechanism of Nagata to ensure the programming of the above discussed system is not accidentally programming a 'non-desired' train.

Regarding claim 8, the examiner took official notice that the use of barcode as readable identifier of the train would be verily common since barcodes to identify items is often used in the art. The applicant did not question the taking of Official Notice therefore it is taken that this feature is admitted prior art. MPEP 2144.03 (c) which states:

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

Regarding claim 17, the examiner took official notice that the location of the elements is well within the skill of the ordinary artisan. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). The applicant did not question the taking of Official Notice therefore it is taken that this feature is admitted prior art. MPEP 2144.03 (c).

1. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art, yang and Nagata as applied to the claims above, and further in view of Young (5749547).

In an analogous art, Young teaches the communication of commands to the train units being over the train tracks. This provides the ability to control the trains as long as they are connected to the track even when the train may be in a tunnel and be out of sight.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the train tracks to communicate commands over the tracks as taught by Young, since this would ensure communication to trains on the track.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERNAL U. BROWN whose telephone number is (571)272-3060. The examiner can normally be reached on 8:30-7:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Zimmerman can be reached on 571-272-3059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vernal U Brown/
Examiner, Art Unit 2612

/Brian A Zimmerman/
Supervisory Patent Examiner, Art Unit 2612